

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

## ORDER

Pending before the Court is Plaintiff Ernest Guardado's ("Plaintiff's") Emergency Motion for Preliminary Injunction, (ECF No. 3). The Government filed a Response, (ECF No. 5), and Plaintiff filed a Reply, (ECF No. 6).

Plaintiff Ernest Guardado (“Plaintiff”) a prisoner at High Desert State Prison (“HDSP”), moves for emergency injunctive relief, claiming he has been denied access to the Native American grounds necessary for the practice of his religious ceremonies. (Mot. Prelim. Inj. 1:15–19, ECF No. 3). Specifically, Plaintiff states that his father passed away on June 16, 2021, and that, “as the oldest living son it is [his] duty to perform the passing ceremony within 24 days of [his father’s] passing.” (*Id.* 4:21–23). Plaintiff explains that in order to perform the ceremony, he must have access to Native American grounds; the burning of herbs; fire; a pipeholder, pipe, and tobacco; drums; and an Inipi (sweat lodge). (*Id.* 5:5–11). Plaintiff also explains that the ceremony requires a minimum of four hours to complete. (*Id.* 8:20–21). However, Plaintiff claims that HDSP has been on lockdown since March 18, 2020, rendering Plaintiff unable to practice or perform religious ceremonies for his sincerely held religious beliefs. (*Id.* 3:11–15).

1 In response, Defendants argue that Plaintiff's Motion is now moot because "after  
2 receiving a copy of the emergency motion, Chaplain Burser and Director Charles Daniels  
3 immediately approved [Plaintiff's] request." (Resp. 1:22–24, ECF No. 5). Defendants explain  
4 that Plaintiff participated in a Native American religious ceremony for approximately two and  
5 half hours on Saturday, June 26, 2021. (*Id.* 1:24–2:2). Nonetheless, Plaintiff insists that his  
6 Motion is not moot because two and a half hours is not enough time to complete the ceremony.  
7 (Reply 1:16–18, ECF No. 6). Plaintiff explains that to perform the ceremony, the sweat lodge's  
8 stones must be "white hot" and that it takes one and a half or two hours for the stones to heat.  
9 (*Id.* 3:16–17). Once the stones have heated, the "sacred sweat for the passing of a family  
10 member requires a minimum of four (4) rounds," each taking fifteen to twenty minutes. (*Id.*  
11 3:15–22). Because the sacred sweat cannot begin until the stones have heated, Plaintiff claims  
12 that he had barely begun to perform the ceremony before he was forced to stop, causing him  
13 irreparable harm. (*Id.* 2:24–3:7).

14 Defendants only Response to Plaintiff's Motion is that the Court should find it as moot.  
15 (*See generally* Resp., ECF No. 5). However, Plaintiff diligently illustrated why his motion is  
16 not moot, explaining that irreparable harm from the violation of his First Amendment rights is  
17 still implicated by the fact that he did not have enough time to perform the religious ceremony.  
18 Accordingly, the Court finds that Plaintiff's Motion is not moot. Because Defendants filed no  
19 alternative response opposing Plaintiff's Motion in the case that it was not moot, the Court  
20 grants Plaintiff's Emergency Motion for Preliminary Injunction. *See* Local Rule 7-2(d).

21 **IT IS HEREBY ORDERED** that Plaintiff's Emergency Motion for Preliminary  
22 Injunction, (ECF No. 3), is **GRANTED**.

23 **IT IS FURTHER ORDERED** that by July 7, 2021, Plaintiff be allowed to complete his  
24 Native American religious ceremony for a minimum of four hours and with access to the  
25

1 Native American grounds, sweat lodge, sweat lodge stones, burning of herbs, fire, a pipeholder,  
2 pipe, tobacco, and drums.

3           **IT IS FURTHER ORDERED** that by 5:00 p.m. on July 6, 2021, the Attorney  
4 General's Office shall inform Director Charles Daniels, Chaplain Burser, Warden Calvin  
5 Johnson, and Chaplain Julio Calderin, of this Order.

6 | DATED this 6 day of July, 2021.

  
Gloria M. Navarro, District Judge  
United States District Court